

Appl. No.: 10/722,380
Amdt. dated 11/28/2005
Reply to Office action of July 27, 2005
Page 2

REMARKS/ARGUMENTS

Reexamination and reconsideration of this application, withdrawal of the rejections, and formal notification of the allowability of all claims as now presented are earnestly solicited in light of the above amendments and remarks that follow.

Claims 8-9, 11-20, 22-24, 26, 27, 30-34, and 39-44 are pending in the application. Applicants note that the Examiner has indicated that claims 8, 9, 14-20, and 24 are withdrawn from consideration as allegedly relating to non-elected subject matter. Applicants respectfully note that claim 14 should not be considered non-elected subject matter. As confirmed in the previous Office Action mailed January 5, 2005, Applicants' representative elected nylon 6 as a polymeric species. Claim 14 is directed to a polyamide polymer selected from a group that includes nylon 6. Thus, claim 14 should be examined.

Claims 11-13, 21-23, 26, 27, 31-34, and 39 stand rejected under 35 U.S.C. §103(a) as being unpatentable over previously-cited U.S. Patent No. 6,162,539 to Shimizu in combination with U.S. Patent No. 6,855,422 to Magill. The Examiner notes that the Shimizu reference fails to teach the core component cross-sectional area presently claimed, but relies upon the Magill reference as allegedly teaching that it is well known to utilize luminescent colorants in multicomponent fibers, and to vary the cross-sectional area of the core from 10% to 90%. Thus, the Examiner concludes that it would have been obvious to combine the teachings of Magill with the Shimizu fiber. Applicants respectfully traverse this rejection.

As noted in the previous Office Action, the Shimizu reference actually teaches away from the presently-claimed invention. The present claims recite that the luminescent colorant-containing core component of the bicomponent fiber comprises less than about 20% of the cross-sectional area of the bicomponent fiber. The Shimizu reference teaches away from a core-to-sheath ratio of less than 1:3. In column 3 of the cited reference, it is noted that section unevenness tends to develop in the core, thereby resulting in deterioration of fiber-forming properties when a core-to-sheath ratio of less than 1:3 is utilized. Thus, one of ordinary skill in the art having knowledge of the Shimizu reference would view a core/sheath ratio of 1:3 as a lower limit and would not be motivated to produce a fiber having a core cross-sectional area as low as about 20% when the core component contains a luminescent colorant.

BEST AVAILABLE COPY

Appl. No.: 10/722,380
Amdt. dated 11/28/2005
Reply to Office action of July 27, 2005
Page 3

The Examiner apparently views the Magill reference as overcoming this clear teaching away in the Shimizu reference. However, this is not the case. The Magill reference is not directed to a core/sheath fiber intended to be highly luminous. Rather, the Magill reference is directed to a multicomponent fiber having a phase change material that serves a temperature-regulating function. Thus, the two references are clearly not directed to solving the same types of problems in the art. In fact, they are not even directed to the same types of fibers. Although the Magill reference lists, in a laundry list of fiber additives, the possibility of adding a "fluorescent whitening agent", it provides no examples of a fiber containing luminescent colorants and, in fact, it is obvious that the presence of luminescent colorants in fibers is nothing more than an afterthought in the Magill reference. There is certainly no teaching in the Magill reference that would override the clear teaching away from the present invention noted above in the Shimizu reference. Unlike Magill, the Shimizu reference is directed to a fiber that is intended to produce a high level of luminance. Thus, one of ordinary skill in the art who is attempting to provide a multicomponent fiber that provides a high level of luminance would clearly consider Shimizu as pertinent, but would not view the Magill reference as relevant to any significant degree. The lack of any specific teaching with respect to high luminance fibers in Magill, combined with the fact that the Magill reference does nothing to overcome or modify the teaching in Shimizu regarding the use of core-to-sheath ratios of greater than 1:3, results in a failure to present a *prima facie* case of obviousness. There is simply no indication in either cited reference, or in the general state of the art, that would provide the necessary motivation to make the modification of Shimizu proposed by the Examiner. Accordingly, Applicants respectfully request reconsideration and withdrawal of this rejection.

Claims 11-13, 26, 27, 30, 31, and 39-44 stand rejected under 35 U.S.C. §102(e) as being anticipated by the above-referenced Magill reference. The Examiner relies upon the Magill reference as teaching multicomponent fibers, and further teaching that one of the fiber components can comprise from 10-90% percent of the total weight of the multicomponent fiber. Applicants respectfully traverse this rejection.

The standard for anticipation is rigorous, requiring that every element of the claimed invention be disclosed by a single prior art reference. *See Minnesota Mining & Mfg. Co. v.*

BEST AVAILABLE COPY

Appl. No.: 10/722,380
Amdt. dated 11/28/2005
Reply to Office action of July 27, 2005
Page 4

Johnson & Johnson Orthopaedics, Inc., 976 F.2d 1559, 1565 (Fed.Cir.1992); *Scripps*, 927 F.2d at 1576-77; *Lindemann Maschinenfabrik GMBH, v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1458 (Fed.Cir. 1984). Additionally, the allegedly anticipatory reference must describe the claimed invention "with sufficient precision and detail to establish that the subject matter existed in the prior art." *Verve LLC v. Crane Cams Inc.*, 65 USPQ2d 1051, 1054 (Fed. Cir. 2002). As also noted by the Federal Circuit, an anticipatory reference must "describe the applicant's claimed invention sufficiently to have placed a person of ordinary skill in the field of the invention in possession of it." *In re Spada*, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990).

As indicated above, the Magill reference is not concerned with the formation of fibers characterized by a high degree of luminance. In fact, the word "luminance" or "luminescent" does not appear at any point in the cited patent. Further, Applicants' elected species of phosphorescent pigments is nowhere described in any section of the cited patent. The word "phosphorescent" does not appear anywhere in the cited patent. The only mention of anything remotely dealing with luminescence is the presence of "fluorescent whitening agents" in a laundry list of fiber additives appearing in column 6. The reference to fluorescent whitening agents appears in the midst of at least 60 different types of fiber additives. The cited patent does not contain any examples wherein a luminescent colorant is incorporated into a fiber. Instead, the clear focus of the reference is on incorporation of a temperature regulating material into the fiber for the purpose of providing a fiber having enhanced reversible thermal properties. Although the patent does suggest that the ratio of core-to-sheath can vary, that disclosure has no meaningful relevance to the claimed invention. Again, the Magill patent is not directed to a luminescent fiber, but rather to a fiber containing a phase change material that is useful as a temperature regulating material. It is in this context that the reference discloses that a wide variance of core/sheath weight percentages can be used. One of ordinary skill in the art would not view Magill as fairly teaching or suggesting a fiber as presently claimed, which not only requires the presence of a luminescent colorant, but also requires that the luminescent colorant be present in a specific component of the fiber that comprises a specific percentage of the cross-sectional area of the overall fiber. Magill simply fails to teach such a fiber with the necessary

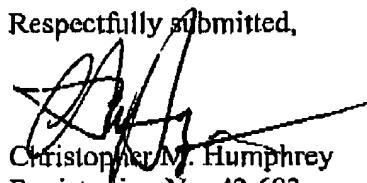
BEST AVAILABLE COPY

Appl. No.: 10/722,380
Amtd. dated 11/28/2005
Reply to Office action of July 27, 2005
Page 5

level of detail required for anticipation. In light of the foregoing, Applicants respectfully request reconsideration and withdrawal of the rejection.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



Christopher M. Humphrey
Registration No. 43,683

Customer No. 00826
ALSTON & BIRD LLP
Bank of America Plaza
101 South Tryon Street, Suite 4000
Charlotte, NC 28280-4000
Tel Raleigh Office (919) 862-2200
Fax Raleigh Office (919) 862-2260

CERTIFICATION OF FAXSIMILE TRANSMISSION

I hereby certify that this paper is being facsimile transmitted to the U.S. Patent and Trademark Office Fax No. (571) 273-8300 on the date shown below.

Tracey S. Wright
Tracey S. Wright

11/28/05
Date

BEST AVAILABLE COPY